U/701 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECODN APPEAL No.442/2005 Single Bench

APPELLANTS
PLAINTIFFS

1(A) Ved Dhar Diwan, Age 45 years
S/o. Manrakhan Diwan.

(B) Laxman Dhar Diwan, Age 42 years
Son of Manrakhan Diwan.

Both impleaded as Plaintiff in place of Original Plaintiff - Kafi Bai, Widow of Manrakhan Diwan, Impleaded on 30/7/1998.

2. Dev Dhar Diwan, Age 40 years
S/o. Manrakhan Dhar Diwan.

All resident of Bajrang Nagar, Chirhuldih Ward, Raipur (C.G.)

P.R. No. 24901/05
Presented by Shri Abhishek Sharma
dated 21/9/05

VERSUS

RESPONDENTS
DEFENDANTS

1 Hariram Dewangan,
S/o. Lalluram Dewangan.

2. Krishna Kumar Dewangan,
S/o. Pratap Chand Dewangan.

Both resident of Bajrang Nagar,
Chirhuldih Ward, Raipur.

APPEAL UNDER SECTION 100 OF C.P.C.

(92)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 442/2005

Appellants : **Ved Dhar Diwan and othrs.**

VERSUS

Respondents : **Hariram Dewangan.**

Shri Kishore Bhaduri learned Counsel for the appellants.

JUDGMENT

(Passed on 06 -12-2005)

Dhirendra Mishra, J

The appellants have preferred this appeal against the judgment and decree dated 21.7.2005 passed by Additional District Judge, Raipur by which the first civil appeal No. 8-A/2002 preferred against the judgment and decree dated 8.2.2002 passed in civil Suit No. 172-A/2001, has been dismissed and the judgment and decree passed by the Civil Judge Class-I has been upheld.

2. The plaintiffs/ appellants filed a suit for perpetual injunction praying that the respondents/defendants be restrained from lifting the debris of the wall in possession of the plaintiffs which had collapsed in rainy season and be further restrained from constructing the Septic tank and thereby creating nuisance.

3. The trial Court dismissed the suit recording a finding that the plaintiffs are not the owner of Khasra No. 128 area 81 sq. ft. and they are not in the possession of the wall shown in the map attached with the plaint and therefore the defendants are not creating any illegal obstruction to plaintiffs' taking the debris and the defendants have not created any nuisance by constructing the toilet and septic tank at the place mentioned in the map attached with the plaint and accordingly with the above finding the suit has been dismissed.

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4. The appellate Court by the impugned judgment has dismissed the appeal of the appellants with a finding that the respondents/defendants have not constructed the septic tank over the land belonging to the plaintiffs and the allegation that the defendants are creating any obstruction in lifting the debris has not been established.

5. Learned counsel for the appellants submits that both the Courts below have relied upon the report of the Commissioner appointed by the Court to conduct the spot inspection and on the basis of the said report the suit has been dismissed. The findings of both the Courts below are perverse as the same are based on conjectures and surmises and without appreciation of the evidence on record. He further submits that the Commissioner in his report has stated that the defendants have not constructed the latrine and bath room in accordance with the approved map and as such the construction is illegal. He further submits that the plaintiffs have submitted the objection to the report of the Commissioner but the same has not been considered and therefore, the findings of both the Courts below that the plaintiffs have failed to prove that construction of septic tank and bath room of the defendant is causing nuisance and as such the same is perverse and contrary to the material available on record and therefore substantial question of law such as " whether the illegal construction of the septic tank by the defendant is not a proof that it is causing nuisance to the plaintiff?" is involved for adjudication.

6. After hearing counsel for the appellants and going through the material available on record this Court finds that both the Courts below after examining the oral and documentary evidence on record and after going through the report of the Commissioner have arrived at the conclusion that the plaintiffs have failed to establish that the defendants are causing any nuisance as claimed by the plaintiffs and accordingly relief for perpetual injunction has been declined. Submission of the counsel for the plaintiffs that the fact that the defendants have constructed the septic tank and bath room in violation of the permission accorded to him in this regard and as such the same is illegal and therefore, the Courts below ought to have presumed that the same is causing nuisance to the

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plaintiffs cannot be accepted. The suit of the plaintiffs has been dismissed by both the Courts below by recording a concurrent finding of fact that the plaintiffs have failed to prove their case by adducing the evidence in support of their application and the above findings are based on proper appreciation of the evidence on record and therefore, no substantial question of law is involved in this appeal for adjudication.

Consequently, the appeal being without merit is dismissed.

Sd/-
Dhirendra Mishra
Judge